

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 95-905-T - ORDER NO. 95-1706 ✓
NOVEMBER 27, 1995

IN RE:	Application of Coastal Rapid Public)	ORDER
	Transit Authority, 1418 Third Avenue,)	APPROVING
	Conway, SC 29526 for a Class A)	APPLICATION
	Certificate of Public Convenience)	AND GRANTING
	and Necessity.)	CERTIFICATE

INTRODUCTION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Application of Coastal Rapid Public Transit Authority ("CRPTA" or "the Applicant") requesting a Class A Certificate of Public Convenience and Necessity to transport passengers over regular routes and schedules as follows:

BETWEEN HORRY AND GEORGETOWN COUNTIES ON THE FOLLOWING ROUTES:

FROM HORRY-GEORGETOWN TECHNICAL COLLEGE (GEORGETOWN CAMPUS) TO GEORGETOWN, S.C. VIA U.S. 17.

FROM GEORGETOWN, S.C. TO CONWAY, S.C. (BY WAY OF PLANTERSVILLE, YAUHANNAH, AND TODDSVILLE) VIA U.S. 701.

FROM CONWAY, S.C. TO LONGS, S.C. (BY WAY OF SHELL) VIA U.S. 905.

FROM LONGS, S.C. TO THE INTERSECTION OF S.C. HIGHWAY 9 AND U.S. 17 VIA S.C. HIGHWAY 9.

FROM THE INTERSECTION OF S.C. HIGHWAY 9 AND U.S. 17 TO CONWAY (BY WAY OF WAMPEE AND NIXONVILLE) VIA S.C. HIGHWAY 90.

FROM LITTLE RIVER, S.C. TO GEORGETOWN, S.C. VIA U.S. 17.

FROM CONWAY, S.C. TO MYRTLE BEACH, S.C. VIA U.S. 501.

FROM INTERSECTION OF U.S. 501 AND S.C. HIGHWAY 544 TO SOCASTEE, S.C. VIA S.C. HIGHWAY 544.

FROM SOCASTEE, S.C. TO MYRTLE BEACH, S.C. VIA S.C. HIGHWAY 707.

FROM 21ST AVENUE AND OAK STREET, MYRTLE BEACH, S.C. TO OAK STREET AND 27TH AVENUE NORTH, MYRTLE BEACH, S.C. VIA OAK STREET.

FROM 27TH AVENUE NORTH, MYRTLE BEACH, S.C. TO U.S. 17, MYRTLE BEACH, S.C. VIA U.S. 17.

FROM INTERSECTION OF U.S. 501 AND OLD SOCASTEE ROAD TO INTERSECTION OF OLD SOCASTEE ROAD AND PINE ISLAND ROAD VIA U.S. 501.

FROM PINE ISLAND ROAD TO INTERSECTION OF BROADWAY STREET AND 17TH AVENUE SOUTH VIA PINE ISLAND ROAD AND BROADWAY STREET.

FROM BROADWAY STREET, MYRTLE BEACH, S.C. TO INTERSECTION OF 17TH AVENUE SOUTH AND BROADWAY STREET VIA 17TH AVENUE SOUTH.

FROM 17TH AVENUE SOUTH, MYRTLE BEACH, S.C. TO INTERSECTION OF 17TH AVENUE SOUTH AND U.S. 17 VIA U.S. 17.

FROM INTERSECTION OF U.S. 17 AND 21ST AVENUE NORTH TO INTERSECTION OF 21ST AVENUE NORTH AND U.S. 17 BYPASS VIA U.S. 17 BYPASS.

FROM INTERSECTION OF U.S. 17 BYPASS AND 21ST AVENUE NORTH TO INTERSECTION OF U.S. 17 BYPASS AND 29TH AVENUE NORTH VIA U.S. 17 BYPASS.

FROM INTERSECTION OF 29TH AVENUE NORTH AND U.S. 17 BYPASS TO U.S. 17 VIA U.S. 17.

FROM SOCASTEE, S.C. TO MURRELLS INLET, S.C. VIA S.C. HIGHWAY 707.

FROM SOCASTEE, S.C. TO SURFSIDE BEACH, S.C. VIA S.C. HIGHWAY 544.

FROM SOCASTEE, S.C. TO MYRTLE BEACH AIR FORCE BASE VIA S.C. HIGHWAY 707.

FROM CONWAY, S.C. TO LORIS, S.C. VIA S.C. HIGHWAY 701.

FROM LORIS, S.C. TO LONGS, S.C. VIA S.C. HIGHWAY 9.

FROM INTERSECTION OF U.S. 701 AND S.C. HIGHWAY 410 TO GREEN SEA, S.C. VIA S.C. HIGHWAY 410.

FROM GREEN SEA, S.C. TO LORIS, S.C. VIA S.C. HIGHWAY 9.

FROM CONWAY, S.C. TO AYNOR, S.C. VIA U.S. 501.

FROM INTERSECTION OF U.S. 17 AND 21ST AVENUE NORTH, MYRTLE BEACH TO INTERSECTION OF 21ST AVENUE NORTH AND OAK STREET, MYRTLE BEACH VIA 21ST AVENUE.

FROM INTERSECTION OF U.S. 17 AND 10TH AVENUE NORTH TO INTERSECTION OF 10TH AVENUE NORTH AND U.S. 17 BYPASS VIA U.S. 17 BYPASS.

FROM INTERSECTION OF 10TH AVENUE NORTH AND U.S. 17 BYPASS TO INTERSECTION U.S. 17 BYPASS AND 21ST AVENUE NORTH VIA U.S. 17 BYPASS.

The Application was filed pursuant to S.C. Code Ann. §58-23-40 (1976).

Subsequent to the initiation of this proceeding, the Executive Director of the Commission instructed the Applicant to cause to be published a prepared Notice of Filing in certain newspapers of general circulation in the area affected by the Application. The Notice of Filing indicated the nature of the Application and advised all interested parties of the manner and time in which to file pleadings for inclusion in the proceedings. The Notice of Filing was duly published in accordance with the instructions of the Executive Director. A Petition to Intervene was timely filed

by The Great American Trolley Co., Inc. ("Great American").

A public hearing concerning the instant Application was convened on October 25, 1995, at 10:30 a.m. in the hearing room at the offices of the Commission located at 111 Doctors Circle, Columbia, South Carolina. The Honorable Rudolph Mitchell, Chairman, presided. CRPTA was represented by Emma Ruth Brittain, Esquire. The Commission Staff was represented by Florence P. Belser, Staff Counsel. Great American did not appear at the hearing.

On the morning of the hearing, Great American's counsel sent to the Commission Staff attorney a letter by telecopier. In the letter, Great American stated that it would drop its opposition to 22 of the routes for which CRPTA sought authority, if the Commission would continue the contested routes (seven in number) until the December hearing scheduled for Great American's pending applications. Staff Counsel presented Great American's letter to the Commission, and the letter was accepted as a hearing exhibit. Counsel for CRPTA argued against continuing any aspect of the hearing. CRPTA stated its belief that the hearing should continue as scheduled as proper notice of the hearing had been given and there was no assertion that notice was defective. The Commission recessed the hearing to discuss the matter. Upon returning to the hearing room, the Commission announced that it denied Great American's request to continue the seven disputed routes until the December hearing and announced also that the Commission decided to dismiss Great American as an Intervenor in the proceedings.

At the hearing, CRPTA presented three (3) witnesses and three (3) hearing exhibits. Elvin Tobin, Executive Director of CRPTA, testified about CRPTA's operations. Mr. Tobin also explained CRPTA's safety and maintenance programs, the proposed routes, and CRPTA's ability to provide the requested service. J. R. Taylor, Chairman of the CRPTA Board, offered testimony regarding the formation of CRPTA, CRPTA's service to Horry and Georgetown Counties, and the history of CRPTA. Jerome Noble, Assistant Deputy Director of Mass Transit for the Division of Mass Transit of the Department of Transportation, testified about CRPTA's status with the Department of Transportation and also testified about the results of the last audit of CRPTA conducted by the Department of Transportation.

APPLICABLE LAW

1. S.C. Code Ann. §58-23-220 (1976) provides as follows:

The Commission may grant a certificate A in the following cases:

(1) To an applicant to operate in territory already served by any certificate holder under this chapter or any common carrier when the public convenience and necessity in such territory are not already being reasonably served by some other certificate holder or common carrier, provided such applicant purposes to operate on a fixed schedule and to comply with the other provisions contained in Articles 1 to 11 of this chapter and the rules and regulations which may be made by the Commission respecting holders of this class of certificates; and

(2) To an applicant for a certificate to operate upon a regular schedule in a territory not already served by the holder of a certificate A, when public convenience and necessity in such territory are not being reasonably served by a certificate holder under this chapter or a common carrier; provided, that when such a certificate A is issued to an applicant over

territory which is being served at the time such certificate is granted by the holder of a certificate B, the right of such applicant to operate under certificate A shall not begin until the expiration of the then license year of the holder of the certificate B and the holder of a certificate B shall be preferred in granting a certificate A over such route unless in the judgment of the Commission it would not be in the interest of the public service.

In either such case the existence of a railroad or other motor vehicle carrier in the territory sought to be served by the applicant shall not be considered by the Commission as good cause for refusing the application.

2. S.C. Code Ann. §58-23-330 (Supp. 1994) contains the grounds for issuance or denial of a certificate and provides, in relevant part, that:

[a]n applicant applying for a certificate or to amend a certificate to operate as a motor vehicle common carrier may be approved upon a showing based on criteria established by the commission that the applicant is fit, willing, and able to perform appropriately the proposed service. If an intervenor shows or if the commission determines that the public convenience and necessity is being served already, the commission may deny the application. ...

3. 26 S.C. Code Ann. Regs. 103-133(1) (as amended in S.C. Reg. Vol. 19, No. 5, published May 26, 1995) sets forth the proof required to justify approving an application and states as follows:

1. For Common Carriers Applying for a Certificate of PC&N. An application for a Certificate of PC&N or to amend a Certificate of PC&N to operate as a carrier by motor vehicle may be approved upon a showing that the applicant is fit, willing, and able to appropriately perform the proposed service, provided however, if an intervenor shows or if the Commission determines that the public convenience and necessity is already being served, the Commission may deny the application. The following criteria should be used by the Commission in determining that an applicant for motor carrier operating authority is fit, willing, and able to

provide the requested service to the public:

a. FIT. The applicant must demonstrate or the Commission determine that the Applicant's safety rating is satisfactory. This can be obtained from U.S.D.O.T., SCDHPT and PSC safety records. Applicant should also certify that there are no outstanding judgments pending against such applicant. The applicant should further certify that he is familiar with all statutes and regulations, including safety regulations, governing for-hire motor carrier operations in South Carolina and agrees to operate in compliance with these statutes and regulations.

b. ABLE. The applicant should demonstrate that he has either purchased, leased, or otherwise arranged for obtaining necessary equipment to provide the service for which he is applying. The applicant should also provide evidence in the form of insurance policies or insurance quotes, indicating that he is aware of the Commission's insurance requirements and the costs associated therewith.

c. WILLING. Having met the requirements as to "fit and able," the submitting of the application for operating authority would be sufficient demonstration of the applicant's willingness to provide the authority sought.

4. "The doctrine of [public] convenience and necessity is a relative or elastic theory. The facts in each case must be separately considered and from those facts it must be determined whether public convenience and necessity requires a given service to be performed or dispensed with." State v. Carolina Coach Company, 260 N.C. 43, 53, 132 S.E.2d 249, 255 (1963).

5. "'Necessity' means reasonably necessary and not absolutely imperative." Id. citing State v. Southern Railway Co., 254 N.C. 73, 79, 118 S.E.2d 21, 25 (1961). "...It is necessary if it appears reasonably requisite, is suited to and tends to promote the accommodation of the public." Id.

6. "In the phrase 'public convenience and necessity' the word 'necessity' means that which is needful, essential, requisite or conducive to 'public convenience.' When more convenient and adequate service is offered to the public, it would seem that necessity requires such public convenience should be served." Atlantic Greyhound Corporation v. Commonwealth of Virginia, 196 Va. 183, 193, 83 S.E.2d 379, 384 (1954).

7. The South Carolina Supreme Court has held that while an intervenor's testimony that its business will be adversely affected by the increased competition produced by an increased number of motor carriers is relevant, such testimony "is not determinative and 'should not in itself defeat an application for additional service'." Welch Moving and Storage Co. v. Public Service Commission, 301 S.C. 259, 391 S.E.2d 556, 557 (1990), citing Greyhound Lines, Inc. v. South Carolina Public Service Commission, 274 S.C. 161, 166, 262 S.E.2d 18, 21 (1980).

After full consideration of the Application, the testimony presented, and the applicable law, the Commission makes the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. CRPTA is a South Carolina corporation which is providing passenger services over regular routes and schedules in Horry and Georgetown Counties and which is fit, willing, and able to perform the services for which it seeks authority.

CONCLUSIONS OF LAW

1. CRPTA has demonstrated that it is "fit, willing, and able" to provide the Class A services for which it seeks authority. Specifically, CRPTA has established that it is "fit" by showing that it has no outstanding judgments pending against it, by certifying that it is familiar with the statutes and regulations governing for-hire motor carrier operations in South Carolina, and by further certifying that it will operate in compliance with these statutes and regulations. CRPTA has shown its "ableness" by establishing that it has the equipment necessary to provide the services for which it seeks authority and that it has insurance which meets the Commission's requirements. CRPTA's "willingness" to provide Class A services in South Carolina is manifested by the submission of the Application and its participation in the hearing process.

2. The Commission also concludes that the public convenience and necessity would be better served by approval of the Application. Testimony of witness Tobin indicates that many of CRPTA's passengers depend upon CRPTA for transportation to and from work. Witness Taylor also testified that CRPTA was established in response to a need in the area for low cost transportation to deliver people to work and school. Further, the record is devoid of any evidence to show that the public convenience and necessity are already being met by existing services in the area.

IT IS THEREFORE ORDERED THAT:

1. The Application of CRPTA for approval of a Class A Certificate of Public Convenience and Necessity for the routes set forth above is approved.
2. Great American's request to continue the hearing regarding seven (7) of the routes in CRPTA's Application until December is denied.
3. CRPTA shall comply with all applicable statutes and regulations regarding for-hire transportation in South Carolina.
4. CRPTA shall file the proper license fees and other information required by S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended) and by 26 S.C. Code Regs. 103-100 to 103-272 (1976, as amended) within sixty (60) days of the date of this Order or within such additional time as may be authorized by the Commission.
5. Upon compliance with S.C. Code Ann. §58-23-10 to §58-23-1830 (1976, as amended), and the applicable provisions of 26 S.C. Code Regs. 103-100 to 103-272 (1976, as amended), a certificate shall be issued herein to CRPTA authorizing the motor carrier services granted herein.

6. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:


Chairman

ATTEST:


Executive Director

(SEAL)